

## SELF SERVICE CENTER

### AFFIDAVIT INSTEAD OF PROBATE -- SMALL ESTATE

#### A. WHEN CAN YOU USE AN AFFIDAVIT?

You might not have to go to probate court at all, if the estate of the person who died is small enough. Generally, you can file an affidavit to claim personal property without going to probate court if:

1. **RIGHT TO SUBMIT AFFIDAVIT.** You have **legal standing** or the right to submit an affidavit to persons who have the property of the person who died, or owe money to the person who died, if:
  - A. You are named in a Will to receive the property of the person who died, and you can prove it;
  - B. The person who died had no will, but you are entitled to the property under law because of one of the following:
    - You are the spouse of the person who died;
    - You are a living child of the person who died, and there is no living spouse;
    - You are the living parent of the person who died, and there are no living children or spouse;
    - You are a living brother or sister of the person who died, and there are no living children, spouse, or parents.
2. **VALUE OF ESTATE.** The value of all of the personal property in the decedent's estate, wherever located, less liens and encumbrances, does not exceed \$50,000.00, and the assessed value of the real property in the decedent's estate located in Arizona, less liens and encumbrances against the real property as of the date of the decedent's death, **does not exceed \$50,000.00.**
3. **ENTITLEMENT TO THE PROPERTY:**

PERSONAL PROPERTY: You are the claiming successor to the personal property and are entitled to payment or delivery of the property.

REAL PROPERTY: You are entitled to the real property by reason of the allowance in lieu of homestead (\$18,000), exempt property (\$7,000) or family allowance (\$12,000) by intestate succession as the sole heir or heirs, or by devise under a valid last will of the decedent. This means any of the following:

  - You are **the living spouse** of the person who died or there is no living spouse and you are the living dependent child, OR
  - The person died without a will and you are the sole heir OR,
  - The person died without a will and the people with equal or greater right than you have to the property have all assigned their entire interests in the estate to you, which is proven by the copy of the documents they signed to this effect that you can attach to the affidavit for personal property, OR,
  - The person died and left a valid will giving the entire estate to you, OR,

- The person died and left a valid will and the people with equal or greater right than you have to the property have all assigned their entire interests in the estate to you, which is proven by the copy of the documents they signed to this effect that you can attach to the affidavit.

## **B. WHAT TO DO AFTER YOU HAVE COMPLETED THE AFFIDAVIT:**

1. **To collect personal property**, take the affidavit to the person who has the property or owes the debt. If you are claiming title to a motor vehicle, pay the fee and the motor vehicle division will transfer title to you.
2. **To claim an interest in real property**, take the following documents to the Probate Registrar at either location of the Superior Court:

### **PHOENIX:**

Old Courthouse, 1st Floor  
125 West Washington  
Phoenix, AZ 85003-2205

### **MESA:**

222 East Javelina Drive  
1st Floor  
Mesa, AZ 85210-6201

- Original Affidavit. If the estate was previously opened, write on the affidavit the old probate case number.
- Original Will if one exists or a certified copy of the Will from the court of record.
- Certified death certificate.
- Copy of the closing statement if there was a probate in another county other than Maricopa County.

File the original affidavit and the original will. If the Probate Registrar determines that your affidavit is complete, the Probate Registrar will issue a certified copy of the affidavit. You must then record the certified copy with the county recorder where the real property is located.